

APPEAL NO. 021938
FILED SEPTEMBER 4, 2002

Following a contested case hearing held on June 12, 2002, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the appellant's (claimant) compensable injury includes an injury to the thoracic area but not to the cervical area or the left shoulder; that, based on the report of the designated doctor, the claimant's date of maximum medical improvement is March 18, 2002, and her impairment rating (IR) is five percent; and that the claimant had disability beginning on February 28, 2002, and continuing through March 18, 2002. The claimant has appealed, on sufficiency of the evidence grounds, the hearing officer's determinations that the claimant's compensable injury does not include her cervical area and left shoulder and that her IR is five percent. The respondent (carrier) urges in it's response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The hearing officer's decision contains a comprehensive summary of the evidence. The claimant testified that on _____, she slipped on some water and bent all the way back, twisting and grabbing onto a door to avoid falling to the floor; that she thereafter felt pressure in her back; that she began to feel upper back pain; and that quite some time later, she began to experience pain in her left shoulder and neck. The parties stipulated that the claimant sustained a compensable injury on that date; it was undisputed that the claimant sustained a lumbar spine injury; and the hearing officer's determination that the compensable injury includes an injury to the thoracic area is not appealed. The medical evidence was in conflict concerning the relationship of the claimant's left shoulder and cervical area symptoms to the compensable injury. The claimant contends in her appeal that the reports of two doctors retained by the carrier, one of whom examined the claimant and the other who reviewed the claimant's medical records, are not credible evidence and should not have been considered by the hearing officer because one of the doctors is biased in favor of the carrier and the other is a "captive doctor." Whether the claimant's compensable injury extended to her cervical spine and left shoulder were fact questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We cannot say that the challenged finding excluding the cervical area and left shoulder from the compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Concerning the appeal of the five percent IR, the evidence reflects that the designated doctor examined the claimant on March 18, 2002, and that, utilizing Tables 70 through 73 of the Guides to the Evaluation of Permanent Impairment, fourth edition, published by the American Medical Association, the designated doctor assigned a five percent rating for her lumbar spine injury and a five percent rating for her cervical spine injury. He indicated that he measured the range of motion (ROM) in all three spinal regions but did not assign a rating for abnormal ROM because he could not get consistent readings. Because the hearing officer found that the claimant's compensable injury did not include her cervical area, the hearing officer determined that only the five percent rating assigned by the designated doctor for the claimant's lumbar spine injury applied. The claimant does not complain of error in the hearing officer's not adopting the five percent IR that the designated doctor assigned for the claimant's cervical spine. The claimant does, however, assert that the hearing officer "abused her discretion" in inferring that the designated doctor did evaluate the compensable thoracic spine injury and determined not to assign a rating for impairment of that body part. The claimant notes that the designated doctor did not state a diagnosis for that spinal region among his diagnoses for the other spinal regions. The hearing officer indicates that the designated doctor's report reflects that he conducted a comprehensive review of the claimant's medical records, including the references to her thoracic spine condition, and that it is clear the designated doctor's failure to rate the thoracic spine was not an oversight but rather a decision, based on his medical expertise and his opinion that the claimant had no impairment to the thoracic spine. We are satisfied that the hearing officer has not erred in determining that the claimant's IR is five percent based on the report of the designated doctor.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LAW OFFICES OF LARRIET THOMAS
3636 EXECUTIVE CENTER DRIVE, SUITE 210
AUSTIN, TEXAS 78731-1643.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge